

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Thursday, December 9, 2010, @ 6:30 PM**
 Office of Zoning Hearing Room
 441 4th Street, N.W., Suite 220
 Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-06-14 (Comprehensive Zoning Regulations Review: Medium & High Density Residential Zones)

THIS CASE IS OF INTEREST TO ALL ANCs

This Notice of Public Hearing announces the fourteenth of several proposed subject areas the Zoning Commission for the District of Columbia (the “Commission”) will consider under this docket. All recommendations offered by the Office of Planning (“OP”) under this docket have been reviewed by a working group and a subject matter task force as part of a process designed to ensure full public participation. Nevertheless, this process cannot replace or limit the public hearing process required in the Zoning Act or the Commission's responsibility to consider the merits of each proposal submitted.

This hearing will consider general recommendations for conceptual changes to the zoning regulations regarding medium and high density residential zones. Specifically, these recommendations apply to the existing R-5 zones. The recommendations propose changes to the regulation of side yards, courts, lot occupancy, and use in mixed use zones. The final recommendation proposes the creation of new zones for existing R-5-B areas based on existing building conditions.

This hearing, like all others under this case number, is being scheduled without adherence to the set-down requirements stated at 11 DCMR § 3011 because the Commission waived the requirement at its public meeting held April 14, 2008. The Commission also waived the requirement that a pre-hearing statement be submitted before hearing notices can be published.

It is not expected that the Commission will take proposed action with respect to these recommendations, but that it will make determinations at a public meeting that will serve as guidance for drafting revisions to the zoning regulations pertaining to downtown zoning and other relevant subject matters. Full analysis and more detailed information on the recommendations can be found in the OP report document at <http://www.dczoningupdate.org/medhighdensity.asp>.

The Office of Planning seeks the Zoning Commission’s guidance as to the following:

Recommendation 1: To promote adaptive reuse of existing buildings, provide the same side yard standard for all uses in the R-5 zones and allow existing buildings to build

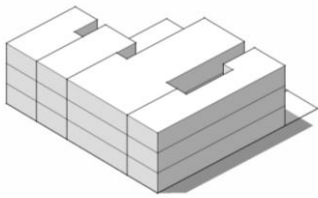
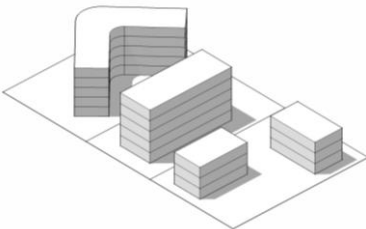
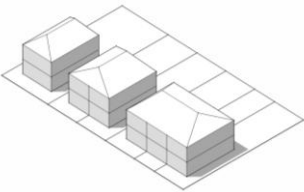
back along existing nonconforming side yards. Define side yard standards to apply to any portion of a building that is set back from the side lot line.

Side yards are not required in any R-5 districts. The standards are only imposed where a side yard is voluntarily provided. In general, the built character of R-5 districts is highly variable. R-5 districts include both modest and large rowhouses (most prevalent in R-5-B, but even occurring in R-5-E districts in the historic Downtown); much larger attached apartment buildings; modernist 20th-century “towers in the park” (most common in the Southwest Waterfront); grand early 20th-century apartments; and more modest mid-rise apartments (such as Wardman Row near Logan Circle). As one might expect with such a variety of building character, side yards range from zero feet to more than one hundred feet. Many buildings in historic neighborhoods have side yards that bear no relationship to the height of the building.

Possible reasons for side yard regulations include the provision of light and air or fire safety. The lack of a requirement for the provision of a side yard however, indicates that these are not the purpose of the existing R-5 requirements. The purpose of side yard minimums for voluntary side yards therefore, can only be to ensure reasonable passage and visual separation of buildings where a side yard is proposed by the builder. As such, the side yard regulations need neither the variability nor complication of the current zone standards, but should provide complete flexibility for the reuse and expansion of existing buildings and a simple and consistent minimum standard for those new buildings with side yards.

Table 1 is based on a random sample of lots in medium- and high-density residential zones. As the table shows, the vast majority of buildings in these districts have no side yards. Buildings with side yards generally fall into two broad categories: houses and other buildings (generally apartment buildings, although a significant number of such buildings in R-5-D are campus-style buildings associated with universities or foreign missions). “Houses,” for the purposes of this analysis, are defined as buildings with side yards that were originally built as one-family dwellings. They may be detached, semi-detached, or rowhouses at the end of a row. Such buildings, where they exist at all in R-5 districts, typically fall within the R-5-B district. Based on the sample, OP estimates that there are less than 500 such buildings in medium- and high-density residential areas across the city.

Table 1: Distribution of Buildings with and without Side Yards

Zone	No Side-yard			Buildings With Side-yards			Houses		
									
R5B	88 %			5 %			7 %		
R5C	86 %			14 %			0 %		

R5D	78 %	18 %	4 %
R5E	98 %	0 %	2 %
Total	87 %	6 %	7 %

As noted above, buildings with side yards do not follow any standard pattern, but rather fall within a variety of typologies (towers, mid-rises, courtyard apartments, etc.). It is highly unlikely that the zoning regulations have had a significant impact on the width or configuration of side yards in such buildings. Mid-rise buildings typically reflect more traditional urban patterns with very narrow side yards that do not meet the eight-foot minimum, and the taller towers and courtyard apartments built later in the 20th century often have side yards that go far beyond the zoning requirements.

In light of the minimal number of side yards, the small size of existing side yards, and the lack of requirement that the side yards be provided at all, OP recommends that the standard side setback requirement, when a side setback is provided, should be a minimum of four feet in width. This standard will promote compatible development, allow for the rehabilitation or reuse of most existing buildings, and provide development flexibility for those buildings in the medium- and high-density residential districts that have side yards.

Furthermore, it is recommended that this side setback standard apply to any portion of a building that is removed from the side lot line. Currently, a “side yard” only exists where the entire building is setback from the lot line. Minimum setback standards for passage should be no different when part of a building is setback versus when the entire building is setback. This change is vital for these zones where a side setback is not required, but portions of the building are commonly setback. This change is also important in light of the proposed removal of court requirements in Recommendation 2.

Recommendation 2: Remove area and width requirements for courts. The building code provides for light, air, and fire safety through requirements for minimum window space and window separation.

The existing approach to regulating courts is largely unchanged from D.C.’s very first zoning code in 1920. The original code had a standard in most areas of 2.5 per foot of height as compared to three or four inches today, and an area requirement for closed courts was added in 1981. Otherwise, the regulation of courts in the zoning code has been virtually unchanged in 90 years. The building and housing codes in the District dealt mainly with building materials and fire safety and did not regulate lighting and ventilation of residential units, including court requirements, until 1941.¹ After 1941 these issues, including court requirements, were included in the building code but never removed from the zoning code. In fact, in the 1956 Lewis report on D.C. zoning, Mr. Lewis recommended removing court and side yard requirements in favor of requirements for minimum light access outside of all windows.² The Commissioners eventually

¹ Building Code of the District of Columbia (1941), Article 503

² A New Zoning Plan for the District of Columbia, pg. 37 (November 9, 1956)

rejected this idea and kept court regulations in zoning, but continued updates to the building code since the 1950s have made the zoning requirements increasingly outdated.

The current definition of a court in the regulations covers almost any condition where an unoccupied space on a lot is not a yard. The definition is broad enough that it has recently been interpreted by the Zoning Administrator to apply to upper story roofs and patios bounded by other building walls. The result of this broad regulation is a lack of flexibility for building owners and builders, who must either build formless boxes or meet large court requirements for any cutouts in their buildings.

In 1981, the Zoning Commission had the following to say about courts:

The Commission believes that the present Regulations regarding courts are in need of revision because they are too restrictive, and unclear with regard to certain issues. The definition of both court and width of court contain a built in predisposition for rectangular courts. As now written, both definitions penalize triangular, curved or multi-sided courts. The present Regulations do not allow significant variation in building façades, because the spaces created by such variations technically must be considered courts. The present Regulations require courts, if provided, to be very large, regardless of the function of such courts. The present width requirements make it extremely difficult to provide open space, in the form of courts, for buildings which are not on large lots. All of these negative aspects of the present Regulations make the use of courts less likely, thereby restricting architectural flexibility and design, and potentially reducing the opportunity for the penetration of light and air to open sides of new buildings.³

The main result of these findings was to create an allowance for a “court niche.” A court niche is defined as “an indentation, recess, or decorative architectural treatment of the exterior wall of a building, not a court, which opens onto a street, yard, alley, or court.”⁴ This means that while large courts that meet size requirements are allowed and small courts that can be described as a court niche are now allowed, medium-sized courts are still not permitted and require a variance.

This solution did not address the underlying problem with the zoning regulations’ vestigial court requirements. Namely, that a standard created to ensure light, air, and possibly fire safety is no longer the best mechanism to do so. Since 1941, the housing code has steadily improved to insure both natural light and air to residential units. Habitable rooms are required to have windows equal to 10% of the floor area.⁵ The building code also deals with fire safety and has standards for the separation of walls with windows.

³ Z.C. Order No. 350 (September 10, 1981)

⁴ DCMR 11 § 199.1

⁵ DCMR 14 § 502.1

While there may be a perception that court requirements result in open space, it is important to note that the regulations have no requirement to provide a court. Court requirements only apply when a court is voluntarily provided. In the quest for large open spaces, the existing court requirements can have the unintended consequence of discouraging the provision of any open space at all.

Recommendation 3: Eliminate narrow courts and side yards from lot occupancy calculations.

Lot occupancy has been used as a standard since the adoption of the original Zoning Regulations in 1920. The purpose of lot occupancy standards is nowhere made explicit. As discussed in the Commercial Areas report, lot occupancy does little or nothing to address core policy objectives such as environmental performance, location of building bulk, and assurance of adequate access to air and light to neighboring properties.

In the Commercial Areas report, OP identified five main problems (discussed below) with the existing lot occupancy standard:

- Lot occupancy standards are generally impractical for small lots and corner lots.
- Standards are often inconsistent with the desired building form, where infill residential or mixed use buildings may be suitable. Lot occupancy limits may be a disincentive to build new buildings with residential uses, either as stand-alone structures or as a part of a mixed-use building.
- Existing buildings are held to the same standard as new buildings – which could limit adaptive re-use.
- Since any floor containing a residential use is restricted in occupancy, the regulations can inhibit a mix of uses on the same floor.
- Residential lot occupancy standards unnecessarily duplicate building code requirements.

The lot occupancy standards could be subject to similar issues in medium- and high-density residential areas. Nevertheless, OP is not prepared at this time to submit a recommendation to remove or make major changes to this standard in Residence Districts. Therefore, the recommendation is simply to carry forward the modest change recommended in the Low- and Moderate-Density Residential report (approved by the Zoning Commission), and no longer count narrow courts and side yards in lot occupancy. This change will likely create a slight incentive to retain existing small courts and side yards, rather than fill them in. Any other changes to lot occupancy standards in Residence Districts would result from local customization, if it is found that existing standards do not accurately reflect the existing or desired character of a local area.

Recommendation 4: Allow a limited set of neighborhood-serving non-residential uses, subject to contextually appropriate performance standards. Standards will include a maximum square footage and may also include:

- ***Concentration limits to prevent multiple uses on the same block***
- ***Limitation to buildings originally (pre-1958) built for commercial purposes***
- ***Maximum hours of operation***

- *Maximum number of employees*
- *Limits on presence or size of signs*
- *Garbage storage (urban design)*
- *Lighting (angle, intensity, quantity, shielding, confined to site)*
- *Screening (hedge/trees) requirements, barrier (fence) requirements for parking, garbage, privacy, glare, noise, odor, etc.*

Generally, commercial uses in residential zones have been established in one of three ways, when they are not allowed matter-of-right or by special exception. They may have been established:

- Prior to the area being zoned residential (and thus continuing as a nonconforming use);
- Through a variance or special exception granted by the BZA; or
- As part of a PUD.

These methods of permission offer public bodies, along with the public at large, a certain amount of discretionary control over the extent and impacts of the uses in question. This level of control can be useful in establishing conditions on a case-by-case basis where commercial uses might have particularly unwelcome impacts, or where they are expected to be phased out over time. The trade-off is that property owners may be forced to go through an expensive and lengthy variance process even for cases where commercial activity is the only viable use of a property, and where it would be welcomed as a neighborhood amenity.

Through an analysis of property records, OP has determined that there are at least 473 commercial uses operating in residential zones. This number excludes institutional and educational uses that are generally allowed matter-of-right or by special exception (e.g., churches, museums, and colleges), but includes uses that would fall into the Retail, Service, Food and Alcohol Services, and Office categories. Of these 473 establishments, 184 fall within R-5 zones. The distribution of these uses is broken down in Table 2.

Table 2: Commercial Uses in Residential Zones

Zone	Commercial Uses	Acres in Zone	Commercial Uses / Acre
R-1 through R-4	289	17,174	0.017
R-5-A	24	4,113	0.006
R-5-B	90	1,350	0.067
R-5-C	3	36	0.083
R-5-D	28	674	0.042
R-5-E	39	123	0.317
R-5 Total	184	6,296	0.029
Total in all R zones	473		

While there are 24 commercial uses in R-5-A zones, the number is very small, relative to the land area of the city zoned R-5-A (4,113 acres). The R-5-D zone has roughly the same number of commercial uses, but seven times as many on a per-acre basis. Similarly, the large number of uses in R-5-B may be slightly skewed by the large land area in that zone (1,350 acres). The R-5-E zone is most densely populated with commercial uses, at a rate of nearly one commercial establishment for every three acres.

Commercial uses in R-5 zones are not distributed evenly throughout the city. OP analysis shows that the vast majority of such uses are concentrated in a narrow band centered along 16th Street N.W. between Piney Branch Road and Massachusetts Avenue. Another cluster is located in the Foggy Bottom and West End neighborhoods.

OP also examined the size of existing commercial establishments. Many residents are understandably concerned about the possibility of allowing commercial establishments in predominantly residential areas, especially if there is no certainty as to the size of establishment that might be permitted. Of the 473 commercial uses currently existing in R-5 zones, the mean floor area is approximately 5,600 square feet. The median floor area is closer to 3,000 square feet (a small number of very large commercial properties appear to skew the average).

Based on the above data, OP would recommend 3,000 square feet as an upper limit on the size of any commercial uses not currently allowed in R-5 zones. The use categories covered by this limitation would include arts design and creation, retail, service, office, and food and alcohol services. Floor area limits could be lower based on local planning objectives, effectively limiting non-residential uses to home occupations.

A common format for low-scale commercial uses in otherwise predominantly residential areas is the corner store. OP investigated the records of commercial uses occurring in R-5 zones to determine whether commercial uses were more likely to occur on corner lots. In fact, out of a sample of 156 commercial establishments in R-5 zones, 78—that is, exactly half—were located on corner lots. Thus, the data do not support any conclusions about the desirability of a blanket (citywide) restriction of commercial uses in residential zones to corner lots. However, such restrictions may be desirable based on local planning objectives, market factors, and community preferences.

The working group had a number of spirited discussions on these topics. Some working group members noted that a greater variety of non-residential uses would contribute desired street life and economic vitality to some higher-density residential areas. Other members felt that a greater variety would be undesirable. In addition, working group members correctly noted that many medium- and high-density residential areas already enjoy substantial access to commercial services and other non-residential uses within walking distance. Therefore, the permissions and limits on non-residential uses should be applied in local context; i.e., they must be considered as part of the local customization of zoning regulations.

The application of use standards should take into account the local character of the built environment (including the historic makeup and use of building stock), the area's economic development goals, and the area's proximity to existing commercial centers and corridors. The appropriateness of an area for such neighborhood uses would be determined on a local basis by small area plan, with reference to the Comprehensive Plan and historic preservation constraints. Based on the findings of the Retail Action Strategy, OP would not support any significant expansion of retail uses that would undermine efforts to retain and strengthen existing Main Streets and other commercial centers. OP is conducting further research to identify areas which may be poorly served by retail uses. It is expected that this work will inform the local application of use permissions.

As noted above, this recommendation would also address the compatibility of non-residential uses that are currently permitted in medium- and high-density residential zones, but which may currently have unregulated impacts. By linking use permissions to their actual impacts, the District can better ensure that such uses are allowed in sizes and configurations appropriate to their context. In addition, the R-5 and SP districts also allow small commercial adjuncts to apartment buildings and hotels, subject to a number of criteria, including a prohibition on external entrances. Retaining such a prohibition may be appropriate on streets where shopfront entrances would be incompatible with the existing or desired character. In other contexts, where occasional shopfront entrances would be seen as desirable features, this prohibition could be lifted.

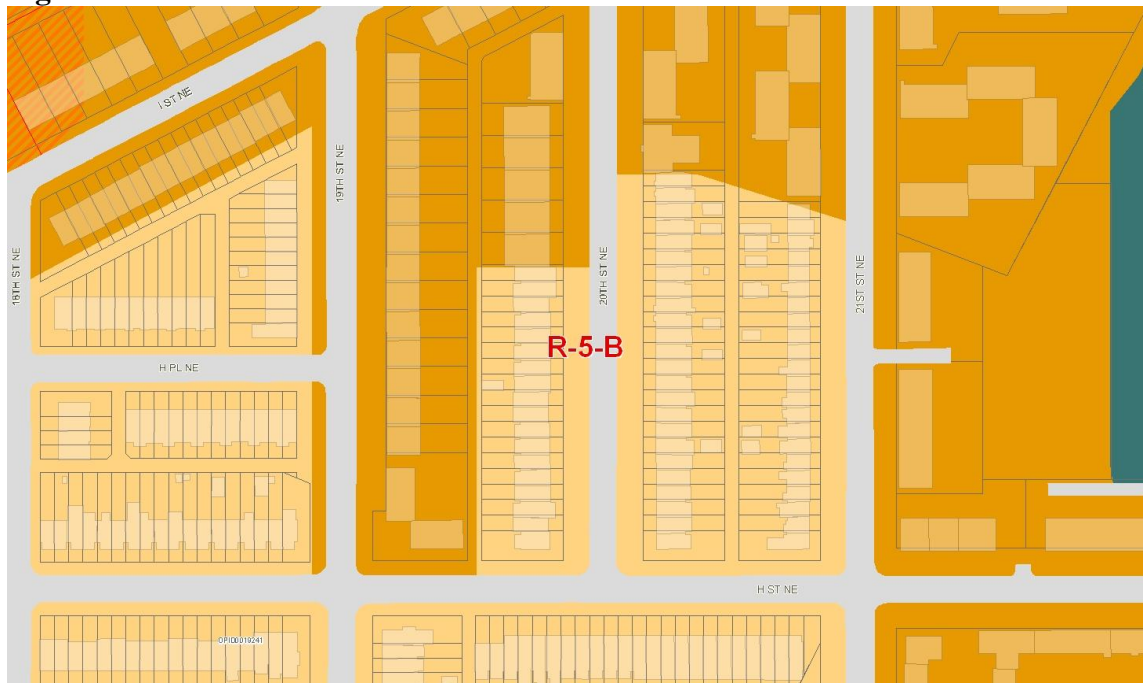
Recommendation 5: Divide the R-5-B zone between apartment areas and rowhouse areas. OP will use analysis of existing R-5-B building characteristics along with Comprehensive Plan guidance to propose new zoning districts in Subtitle D (R-1 to R-4) for rowhouse areas currently designated R-5-B.

Discussion

In addition to the clear Comprehensive Plan guidance cited above, OP analysis of the R-5-B zone shows a clear disconnect between many of the mid-city, well-established rowhouse areas and the existing zoning in place. The zone is effectively split between older rowhouse forms and newer apartment building neighborhoods. Figure 1 below exemplifies this pattern. The entire area depicted is zoned R-5-B, but there is a clear distinction between the rowhouse areas (in beige) and the apartment areas (in orange).

The structure of the new zoning code was designed around a separation of residential zones into two distinct types, limited unit zones (Subtitle D) and unlimited unit zones (Subtitles E & F). While the standards of the existing R-5-B zone fall into the category of unlimited units, the moderate-density, traditional rowhouse neighborhoods would be more appropriately zoned in a way that limits the number of units and encourages retention of the traditional rowhouse form.

Figure 1: R-5-B zoned area



In 2007, OP did a square by square analysis of R-5-A properties in Wards 7 and 8. Based on that analysis, hundreds of properties in several neighborhoods were downzoned to single family zones that were more in line with the existing and desired building character. OP proposes a similar exercise for the R-5-B zone.

Using lot by lot analysis, OP will separate the rowhouse and apartment areas currently zoned R-5-B. For the row house areas, OP will propose new zones designed to protect the existing rowhouse building form and limit the number of units. Unit limitations will be based on existing unit numbers, but it is likely that unit maximums in the new zones will range between two and six.

OP will work with affected neighborhoods and property owners to ensure that any changes are acceptable to stakeholders and in line with desired outcomes and the Comprehensive Plan. Because of the uncertainty of the timeline for the public process involved with this rezoning, it may not be finished prior to the adoption of the new zoning code.

PROCEDURES

The public hearing on this part of Case No. 08-06 will be conducted as a rulemaking in accordance with the provisions of § 3021 of the District of Columbia Municipal Regulations,

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Title 11, Zoning. The Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of the particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, KONRAD SCHLATER, GREG M. SELFRIDGE, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JAMISON L. WEINBAUM, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.